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IN THE

Supreme Court of the United States

BOY SCOUTS OF AMERICA and MONMOUTH COUNCIL, BOY SCOUTS OF AMERICA,

Petitioners,

v.

JAMES DALE,

Respondent.

ON WRIT OF CERTIORARI
TO THE NEW JERSEY SUPREME COURT

Brief Of *Amici Curiae* The General Board Of Church And Society Of The United Methodist Church, The United Church Board For Homeland Ministries, The Religious Action Center Of Reform Judaism, The Diocesan Council Of The Episcopal Diocese Of Newark And The Unitarian Universalist Association In Support Of Respondent

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INTEREST OF THE *AMICI CURIAE*[1]

Amici curiae are some of Scouting's largest religious sponsors. Together with government entities that join us in the Boy Scouts of America ("BSA" or "Boy Scouts"), we sponsor nearly 60% of all boys in Scouting. It is *our* boys and young men that the BSA seeks to exclude from *our* Scout troops under cover of *our* First Amendment freedom of association. It is essential that we convey to this Court that our boys' participation in Scouting (whether they are gay or not) has no effect upon Boy Scout members' ability to express any of the views that brought us together in Scouting.

We have always recognized that we are partners in Scouting with a diverse group of religious organizations that agree to disagree about numerous issues, including recently the theological meaning that some Boy Scout members apply to the Scouting terms "morally straight" and "clean." For *amici*, these terms have nothing to do with sexual orientation. For some of our partners, that is not the case.[2] But despite these divergent views regarding sexual orientation, *amici* and our partners in Scouting have never lost sight of our fundamental purpose in this enterprise — promoting the development of boys in accordance with the Scout Oath and Law.

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1. The parties have consented to the filing of this brief. Their letters of consent are on file with the Clerk of the Court. This brief has been authored in its entirety by undersigned counsel for the *amici curiae*. No person or entity, other than named *amici curiae* and their counsel, made any monetary contribution to the preparation and submission of this brief.

2. *See, e.g.*, Brief of National Catholic Committee on Scouting, *et al.* as *Amici Curiae* in Support of Petitioners, dated February 28, 2000 ("Committee Brief").

This important goal is also shared by the government entities that have always been our partner in the Boy Scouts. Government entities are deeply entwined in the affairs of the Boy Scouts. More boys participate in Scouting through government entities than through any religious organization. Like *amici*, these government entities participate in Scouting in order to promote boys' healthy development in accordance with the Scout Oath and Law, and not for any discriminatory purpose. Indeed, far from being a religious ministry with a particular view of morality, Scouting is a non-sectarian organization with room for the government and for a variety of moral viewpoints, no single one of which justifies excluding our boys or adult participants from Scouting.[3]

Amicus The General Board of Church and Society of The United Methodist Church (the "Methodist Board") is the public policy and social action agency of The United Methodist Church. The United Methodist Church is the *largest* single sponsor of Boy Scout troops in the country. It sponsors more than 12,000 Boy Scout troops consisting of more than 424,000 boys and men. Pursuant to *The United*

3. Consistent with what we have always understood, the BSA Declaration of Religious Principle explicitly states that Scouting is "identified with no particular faith, encourages no particular affiliation, nor assumes the function of religious bodies." A.880. In fact, religious organizations that sponsor troops (including *amici*) are directed by the Boy Scouts to refrain from imposing their religious beliefs on Scouts. In no case where a unit is connected with a church, synagogue or other religious organization may members of other faiths or denominations be required because of their membership in the unit to take part in or observe a religious ceremony unique to that church or organization. A.1176.

Numbers preceded by "A" refer to pages in the record before the New Jersey Supreme Court.

Methodist Church Book of Discipline — 1996, the primary responsibility of the Methodist Board is to seek the implementation of the Social Principles of The United Methodist Church that have been adopted by the General Conference of The United Methodist Church, the only entity within The United Methodist Church authorized to speak on behalf of the entire denomination, including its Scouting ministries. Through its Social Principles, The United Methodist Church has decreed — in irreconcilable opposition to the "moral beliefs" alleged to govern the Boy Scouts — that all persons, regardless of sexual orientation, are entitled to have their human and civil rights protected and that homosexual persons no less than heterosexual persons are individuals of sacred worth. Consistent with the Methodist Board's responsibility to implement these Social Principles, the General Board of Church and Society of The United Methodist Church rejects Petitioners' characterization of Boy Scout members' moral views.[4]

4. The General Commission on United Methodist Men (the "UMM"), which was formed in 1995, decades after The United Methodist Church became a supporter of Scouting, has filed a brief *amicus curiae* in support of Petitioners. It is important to note that under The United Methodist Church organizational policy, UMM may file such a brief, but it is nevertheless expected that UMM will uphold the Social Principles of The United Methodist Church. *Amicus curiae* The General Board of Church and Society of The United Methodist Church is authorized by The United Methodist Church to implement the Social Principles of The United Methodist Church (including those Social Principles condemning discrimination against gay boys and men) that have been adopted by the General Conference, and which thereby apply to, and represent the views of, the entirety of The United Methodist Church, including its Scouting ministries. As Rev. Faith Conklin, who is a board member of UMM, recognized upon voting against UMM filing

(Cont'd)

Amicus United Church Board for Homeland Ministries (the "Homeland Ministries") is the domestic mission arm of the United Church of Christ (the "United Church"), which has 1.4 million members in 6,000 congregations. United Church congregations sponsor 1,450 Boy Scout troops consisting of more than 54,000 boys and men. Homeland Ministries is the agency within the United Church responsible for the United Church's relationship with the Boy Scouts of America through its Office for Youth and Young Adult Ministries. Homeland Ministries, like the United Church's General Synod (its highest decision making body), is committed to the full inclusion of lesbian, gay, bisexual and transgender persons in the life and ministry of the church, including its Scouting ministries. There are more than 100 openly gay and lesbian clergy serving full time as pastors of United Church congregations. Consistent with the United

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(Cont'd)
an *amicus* brief on Petitioners' behalf, "[s]uch action [] conflicts and is inconsistent with [The United Methodist Church's] stated affirmation of the worth of every person and [The United Methodist Church's] commitment to reject justice denying policies of discrimination." United Methodist News Service, *United Methodist Men to Support New Jersey Boy Scout Appeal,* September 20, 1999.

Accordingly, the claim by Petitioners' *amici* that they represent the largest share of the boys in Scouting simply is incorrect. Committee Brief, at 1. Without the millions of boys who participate in Scouting either through government entities that do not discriminate on the basis of sexual orientation or through religious organizations such as *amici* that disagree with Petitioners' moral views, the voice of Petitioners' *amici* regarding the morality of gay boys (or the meaning of the Scouting terms "morally straight" and "clean") rightly is heard not as the dominant voice in Scouting, but rather as only one of the many diverse voices among Scouting's membership regarding this issue.

Church's policies opposing discrimination based on sexual orientation, the United Church Board for Homeland Ministries rejects Petitioners' characterization of the moral views that brought the United Church into Scouting.

Amicus Religious Action Center of Reform Judaism pursues social justice and religious liberty as the official representative of the Union of American Hebrew Congregations, the governing body of Reform Judaism, North America's largest Jewish body. Reform Judaism's 875 congregations (representing 1.5 million people in the United States and Canada) sponsor Boy Scout troops consisting of more than 2,000 boys and men. Reform Jews are aware of the costs to individuals, families and society of the oppression of those who differ from society's majority. For this reason — and in accordance with the teaching of Reform Judaism that all individuals are created *betselem elohim* (in the divine image) — Reform Judaism strongly condemns discrimination on the basis of sexual or affectional orientation and rejects the claimed "moral beliefs" ascribed to Scouting's members by Petitioners as antithetical to the true purposes of Scouting.

Amicus Diocesan Council of the Episcopal Diocese of Newark represents 130 congregations made up of 30,000 confirmed communicants and 275 clergy in seven counties in the State of New Jersey. Congregations represented by the Diocesan Council sponsor Boy Scout troops consisting of hundreds of boys and men. The Diocesan Council, in accordance with the teachings of the Episcopal Church in the United States of America, affirms the rights of lesbians and gay men to the equal protection of the laws and to live free from discrimination based upon affectional or sexual orientation. The Diocesan Council rejects Petitioners' characterization of Boy Scout members' moral views regarding gay boys and men.

Amicus Unitarian Universalist Association is a religious association of more than 1,000 congregations in the United States, Canada and elsewhere. Unitarian congregations sponsor Boy Scout troops consisting of more than 1,000 boys and men. Through its democratic processes, the Unitarian Universalist Association has adopted numerous resolutions affirming the rights of lesbians and gay men to live free from discrimination based on sexual orientation and affirming the goals of equality, dignity and respect for all people, regardless of affectional or sexual orientation. Consistent with these resolutions, the Unitarian Universalist Association rejects the claimed "moral beliefs" ascribed to Scouting's members by Petitioners.

SUMMARY OF ARGUMENT

Together with public schools and other government entities joining us in the Boy Scouts of America ("Boy Scouts" or "BSA"), the faith groups and religious organizations participating as *amici* represent more than 60% of all boys in Scouting. Because we have come together with others in the Boy Scouts for its true purposes — teaching *our* boys and young men to be trustworthy, loyal, kind, morally straight and clean — and *not* for discrimination, we affirm to this Court that we have no First Amendment problem in this case. Contrary to Petitioners' assertions, *amici curiae* and our boys and young men do not participate in the Boy Scouts for the purpose of expressing the view that gay boys and men are immoral. We believe that it is discrimination against gay people that is immoral, a belief that we teach our boys in Scouting and that BSA has never told us not to teach. Accordingly, James Dale's membership in the Boy Scouts will not impair our ability to express any of the views that, in fact, did bring us into Scouting, such as the inculcation in *all* of our boys and young men of

Scouting values that will " 'prepare them to make ethical choices over their lifetime in achieving their full potential.' " Pet. Mem. at 2, *citing* A.2238.[5]

ARGUMENT

PETITIONERS' CLAIM TO A FIRST AMENDMENT RIGHT TO EXCLUDE GAY BOYS AND MEN FAILS UNDER THIS COURT'S PRECEDENTS BECAUSE THE MEMBERS OF SCOUTING DO NOT SHARE, AND DID NOT COME TOGETHER TO EXPRESS, ANY VIEW ABOUT HOMOSEXUALITY

If it were true, BSA's assertion that it "has certain moral beliefs" arising out of its members' association in order "to promote the view that homosexuality is immoral" might establish its *members'* First Amendment right to exclude James Dale (and all other gay boys and men) from Scouting. Brief for Petitioners, at 20, 25. But BSA's assertion is false. As faith groups and religious organizations that have sponsored Scouting for decades, we state emphatically that we do not subscribe to such a view and that our expressive purposes in Scouting are not impaired by the participation of any of our boys, gay or straight, in Scouting. We believe that it is discrimination against gay people that is immoral, a belief that we teach our boys in Scouting and that BSA has never told us not to teach. In the end, BSA seeks to effectuate the personal biases of some under the guise of *our* First Amendment associational freedoms which are *not* implicated by the participation of gay boys and men in Scouting.

Amici faith groups and religious organizations are the Boy Scouts' chartered sponsors (or official agencies thereof).

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5. "Pet. Mem." refers to Boy Scouts of America and Monmouth Council, Boy Scouts of America's Petition for a Writ of *Certiorari*.

We speak both for our boys and for the adults among us who are the volunteer leaders who run our troops and support our involvement in Scouting.[6] While acutely aware of the critical importance of the First Amendment freedom of expressive association, we submit this brief to alert the Court to the *actual* views of BSA members regarding gay boys and men and anti-gay discrimination — views that differ fundamentally and irreconcilably with the views ascribed to Boy Scout sponsors and members in BSA's petition for a writ of *certiorari* and in its brief on the merits. While BSA hypothesizes that "[f]or most of Scouting's history, no one could have had any doubt about the organization's view on homosexuality," in fact it is the contrasting views of *amici* regarding our gay boys that always have been known to BSA. Brief for Petitioners, at 5. Before approving any sponsor of Boy Scout troops, BSA investigates "the general objectives, purpose, character, intent, and programs of the prospective chartered organization or community group and its compatibility with the aims and purposes of the Boy Scouts

6. Organizationally, the Boy Scouts grants unit charters to sponsors consisting of "organizations and groups of citizens" that establish and "maintain units . . . and . . . issue certificates of membership . . . to the officers and members thereof." *Dale v. Boy Scouts of America*, 160 N.J. 562, 572, 734 A.2d 1196, 1201 (1999). Unit charters allow the "organization to use the Scouting program *under its own leadership* to serve the youth and families for which it has concern, *to help it accomplish its own objectives*." *Id.* (emphasis supplied). We have always taught our boys that discrimination against gay people is immoral, and BSA has never interfered with our instruction of our boys in that regard. Moreover, as the Boy Scouts' chartered sponsors and members, it is our expressive association rights (and those of the youth and families for which we have concern) that are implicated here. The First Amendment right to associate belongs to an organization's members. *See, e.g., Roberts v. United States Jaycees*, 468 U.S. 609 (1984).

of America." *Dale*, 160 N.J. 562, 572, 734 A.2d 1196, 1201 (1999). BSA has always known that neither we nor the public schools, fire departments, police departments and other public entities who join us, subscribe to, or participate in Scouting to promote, the view that gay boys and men are immoral or should be excluded from Scouting.

Amici faith groups and religious organizations *do* sponsor Scouting — and sponsor troops for our boys and young men to participate in Scouting — for Scouting's *true* purposes as set forth in the Scout Oath and Law. These include teaching *all* of our boys and young men important values that Scouting's members do share, such as trustworthiness, loyalty, kindness, respect for others, bravery and living one's life in a morally straight and clean manner. *Dale*, 160 N.J. at 574-75. In all of our decades of participation in Scouting, we have never seen, in any Scouting literature sent to us, any reference to the Boy Scouts' anti-gay policy (which applies to all of our boys, and not merely to our young men who, like James Dale, rise to a leadership position within Scouting). Nor have we been told by BSA to communicate any anti-gay view to our youth or to exclude any of our boys or adult volunteers. As we have learned of BSA's covert anti-gay policy (through media coverage of various litigations), we have spoken out in opposition to the exclusion of gay boys and men. We will continue to speak out for inclusion of all of our boys and men as we continue to come together with other members of the Boy Scouts to promote boys' development in accordance with the membership's shared belief in the Scout Oath and Law.

We are familiar with and support the *Roberts* trilogy framework for balancing an organization's legitimate interests in its membership policies with a State's compelling

interest in eradicating discrimination. *Roberts v. United States Jaycees*, 468 U.S. 609 (1984); *Board of Directors of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537 (1987); *New York State Club Ass'n v. City of New York*, 487 U.S. 1 (1988). The *Roberts* trilogy makes clear that an organization may exclude an individual without regard to an otherwise applicable anti-discrimination law *only* when that individual's presence as a member will interfere with the current members' ability to promote those views *that brought them together. Id.* In this case, while some BSA members may believe that gay boys and men are immoral, *amici curiae and the public entities involved in the Boy Scouts do not*, rendering untenable the Boy Scouts' assertions that we, Scouting's members, have come together to express a shared view of the morality of gay boys and men or that the inclusion of gay boys and men in the Boy Scouts will impair our ability to express those views that did, in fact, bring us all together.[7]

BSA and its *amici* argue in essence for an abandonment of the *Roberts* trilogy in favor of a theory of expressive association jurisprudence that would make the Boy Scouts' leadership the sole judge of whether the Boy Scouts is entitled to First Amendment protection. BSA argues that:

> even if it were true that Boy Scouts of America had never articulated moral disapproval of homosexuality until now, that would be

7. The Boy Scouts' suggestion that our views may be ignored because "it is not uncommon for members of expressive groups to disagree about some aspects of the group's beliefs" misses the point entirely. Pet. Mem., at 24-25. Under the *Roberts* framework, if some of the current members already subscribe to a particular point of view, then the admission of another individual who shares that view cannot be said to interfere with the membership's ability to promote the views that brought them together.

> completely irrelevant [because a] private organization has the right to decide for itself what it believes, *and to change those beliefs when it sees fit.*

Brief for Petitioners, at 27 (emphasis supplied). In other words, the Boy Scouts argue, an organization faced with a charge of discriminatory exclusion may without any substantiation that its members indeed associate in order to promote a view at odds with a view held by the individual (or group of individuals) sought to be excluded, suddenly claim that the organization now subscribes to a view incompatible with the claimant's admission and that the First Amendment thereby protects the organization's otherwise discriminatory exclusion. If adopted, the Boy Scouts' theory would render the *Roberts* framework and civil rights laws across the country a nullity.

Amici believe that the *Roberts* framework, which promotes civil rights enforcement within First Amendment boundaries that address viewpoint (and not mere identity), best balances the competing interests between individuals' First Amendment right to associate to promote shared views and a State's compelling interest in eradicating discrimination. Under the *Roberts* framework for examining the views of an organization's members, the Boy Scouts' First Amendment claim that it is entitled to discriminate against our gay boys must fail.

A. The Views of *Amici Curiae* Religious Sponsors and Members of Scouting

1. *The United Methodist Church*

The United Methodist Church (of which *amicus curiae* the General Board of Church and Society of The United Methodist Church is the official agency empowered to implement its Social Principles) is the *largest* single sponsor of the Boy Scouts nationally with more than 12,000 troops consisting of more than 424,000 boys and men. In fact, James Dale's Boy Scout troop — Troop 73 — was sponsored by The United Methodist Church and met in a hall provided by the Matawan First United Methodist Church. A.205. The Boy Scouts' rhetoric about protecting religious liberty is just that. It was the Boy Scouts' national leadership — in opposition to the religious doctrines of James Dale's Methodist troop sponsor — that expelled James Dale from membership in his United Methodist Church troop. The United Methodist Church has for decades supported the true purposes of Scouting, including teaching all boys and young men to be loyal, courageous, honest, reverent, morally straight and clean. The United Methodist Church does not participate in Scouting to promote the view that gay boys and men are immoral.

Moreover, the United Methodist Church strongly condemns discrimination against gay boys and men. *See generally* A.3965. The *Book of Discipline of The United Methodist Church — 1996* (the "*Book of Discipline*"), adopted by the General Conference of The United Methodist Church in 1996, states that "[w]e insist that all persons, regardless of age, gender, marital status, or sexual orientation, are entitled to have their human and civil rights

ensured." *Book of Discipline* Section II, ¶ 65(G) ("Human Sexuality"), at 89. The *Book of Discipline* also affirms that United Methodists "are committed to supporting [human] rights and [civil] liberties for homosexual persons." *Id.* Section III, ¶ 66(H) ("Equal Rights Regardless of Sexual Orientation"), at 94. It recognizes as well that claims of gay people to "equal protection before the law" present "a clear issue of simple justice." *Id.* As The United Methodist Church's policies demonstrate, the Boy Scouts' assertion that The United Methodist Church participates in Scouting to promote the view that homosexuality is immoral is false.

Accordingly, when it learned about the Boy Scouts' anti-gay litigation policy, The United Methodist Church's General Board of Church and Society, fulfilling its obligation to seek the implementation of the Social Principles of The United Methodist Church which unequivocally prohibit discrimination against gay boys and men, condemned the anti-gay policy and stated that:

> [T]he Boy Scouts of America's discrimination against gays . . . conflicts with [The United Methodist Church's] Social Principles. . . . The General Board of Church and Society affirms the decision of the New Jersey Supreme Court in the case *James Dale v. Boy Scouts of America* that ruled the Boy Scouts of America is discriminatory in its exclusion of gays. We . . . call upon the Boy Scouts of America to discontinue this exclusion of gays.

Statement of the General Board of Church and Society of The United Methodist Church, adopted October 10, 1999.

Tellingly, rather than seeking to exclude its largest sponsor from the Boy Scouts because of The United Methodist Church's condemnation of discrimination against homosexuals, the Boy Scouts responded to adoption of the Methodist Board's October 10, 1999 Statement affirming the New Jersey Supreme Court's decision in this case by stating that "[w]e hope that we could continue the relationship with [T]he United Methodist Church." Frank J. Murray, *Methodist Panel Chides Scouts On Gay Troops*, Washington Times, October 13, 1999, at A3. By contrast, James Dale, who had expressed no view, was summarily excluded from the Boy Scouts *not* because of any conflict between his views and the views of the Boy Scouts' existing members, but solely because Boy Scout officials fortuitously discovered that he is gay.

2. *The United Church of Christ*

The United Church of Christ, whose congregations sponsor more than 1,450 Boy Scout troops consisting of more than 54,000 boys and men (making it one of the Boy Scouts' 15 largest chartered organizations as of 1997), has a long history of participation in the Boy Scouts of America. We have always understood the true purposes of Scouting to be to teach our boys and young men to live obediently, bravely, kindly, reverently and in a morally straight and clean manner in accordance with the Scout Oath and Law. The assertion by BSA officials that United Church congregations and boys participate in Scouting to promote the view that gay boys and men are immoral is simply incorrect.

In fact, we have a long history of opposing discrimination based on sexual orientation. In 1977, for example, the biennial United Church General Synod (the United Church's highest decision making body):

> 1. Reaffirm[ed] the action of the Tenth General Synod in its pronouncement on Civil Liberties Without Discrimination Relating to Affectional or Sexual Preference [or Orientation];
>
> 2. Deplore[d] the use of scripture to generate hatred, and the violation of civil rights of gay and bisexual persons; and
>
> 3. Call[ed] upon individual [United Church] members, local churches, Associations, Conferences, and Instrumentalities to continue to work for the enactment of civil rights legislation at the federal, state, and local levels of government.

Eleventh General Synod of the United Church of Christ, Resolution Deploring the Violation of Civil Rights of Gay and Bisexual Persons (1977). A.3823. Indeed, the United Church was an early supporter of the rights of lesbians and gay men; in 1972, in fact, the United Church ordained its first openly gay minister. Deb Price, *Times Have Changed, But Not Fast Enough*, San Francisco Examiner, June 21, 1994, at B7. Since 1975, the United Church has reaffirmed its commitment to ensuring full civil rights for lesbians and gay men and has taken steps to "facilitate the ordination and placement of qualified lesbian, gay and bisexual candidates" for ministry in United Church congregations. General Synod of the United Church of Christ, Resolution on Affirming Gay, Lesbian and Bisexual Persons and Their Ministries (1991). A.3858.

As our policies make clear, Petitioners' assertion that we participate in Scouting to promote the view that homosexuality is immoral is false. In fact, as word spread

through the media of the Boy Scouts' litigation position regarding gay boys and men, we concluded that this shocking stance was incompatible with our own anti-discrimination policies. Accordingly, on February 8, 1993, Rev. Gordon J. Svoboda, II, *amicus curiae* United Church Board for Homeland Ministries' Secretary for Education in Human Identity and Youth and Young Adult Programs, wrote to the Boy Scouts, noting that:

> [n]o less than eleven votes in the national setting have been taken inviting study and action to overcome homophobia and the resultant prejudice against gay, lesbian, and bisexual persons. These votes, taken by the church's highest deliberative body, the General Synod, and its Executive Council, address our needs: to affirm the civil liberties of all persons without discrimination based on sexual orientation; to encourage the welcoming of gay, lesbian, and bisexual persons into membership and ordained ministry in the United Church of Christ; and, to protect the right to privacy of all people in consensual, adult relationships.

The letter implored "the Boy Scouts of America [to] stop its discriminatory practices of prohibiting openly gay, lesbian, and bisexual persons from holding leadership positions at all levels of the scouting organization."

Despite our expressed moral views, the Boy Scouts nevertheless sought the endorsement of the United Church in 1998 in order to recruit local United Church congregations as Boy Scouts sponsors. On September 18, 1998, Rev. Dr. Paul H. Sherry, then President of the United Church, wrote

to Jere B. Ratcliffe, Chief Scout Executive of the Boy Scouts and Thomas R. Deimler, then Director of Religious Relationships of the Boy Scouts, stating again that:

> The General Synod of the United Church of Christ has a twenty-nine year history of pronouncements, resolutions, and prophetic actions seeking affirmation and justice for gay, lesbian, and bisexual persons, both in the church and in the larger society. . . . *I ask you, again, to abandon policies and practices which, in our judgment, perpetuate homophobia, hate and hurt to others, and fail to support the most fundamental values of respect and compassion for others which Scouting seeks to encourage.* We are deeply concerned about the damage being done to gay youth who wish to participate in scouting and the destructive effects upon non-gay youth whose anti-gay prejudices may be reinforced by your policies.

(Emphasis supplied).

In response, Mr. Deimler of the Boy Scouts wrote to Rev. Dr. Sherry of the United Church on November 23, 1998 that "[o]ur goal will be to continue the national support of the Boy Scouts of America in serving youth of the United Church of Christ through Scouting." As with The United Methodist Church, it is apparent that while heterosexual members and sponsors may hold *any* view of homosexuality contrary to the claims of the Petition, gay boys and men are automatically excluded from membership solely because of who they are.

3. *Reform Judaism*

The Union of American Hebrew Congregations ("UAHC") (represented in this action by its social justice agency, *amicus curiae* Religious Action Center of Reform Judaism), the governing body of Reform Judaism, North America's largest Jewish body, sponsors BSA troops in order to teach our boys and young men to live in a trustworthy, loyal, kind, brave, reverent, morally straight and clean manner consistent with the Scout Oath and Law.[8] We do not participate in Scouting for our boys to learn that gay youth and men are immoral or should be excluded, beliefs we simply do not hold.

On the contrary, the UAHC "has consistently supported the civil rights and civil liberties of all persons" and has stated in particular "that homosexual persons are entitled to equal protection under the law. We oppose discrimination against homosexuals in areas of opportunity, including employment and housing. We call upon our society to see that such protection is provided in actuality." General Assembly of UAHC, Statement on Human Rights of Homosexuals (1977). A.3897.

Not only have we consistently opposed discrimination based upon affectional or sexual orientation, we have specifically welcomed lesbian and gay Jews as leaders of our congregations. The Central Conference of American Rabbis declared in 1990 that "[a]ll Jews are religiously equal regardless of sexual orientation." That being the case, the statement continued, "all rabbis, regardless of sexual

8. UAHC congregations sponsor Boy Scout troops consisting of at least 2,000 boys and men. Many more Reform Jews are affiliated with Scouting through non-UAHC organizations.

orientation, [should] be accorded the opportunity to fulfill the vocation which they have chosen." Central Conference of American Rabbis, Ad Hoc Committee on Homosexuality and the Rabbinate, Report (June 25, 1990). A.3902; *see also Gay Rabbis*, Time, July 9, 1999, at 62; Ari L. Goldman, *Reform Judaism Votes to Accept Active Homosexuals in Rabbinate*, N.Y. Times, June 26, 1990, at A1. The Boy Scouts' assertion that we participate in Scouting to promote Petitioners' asserted "moral beliefs" is incorrect. Brief for Petitioners, at 20, 25.

We further believe that discrimination against an individual because of his sexual orientation is no more morally acceptable because it is practiced by an organization which otherwise promotes laudatory values. We have specifically voiced our condemnation of BSA's anti-gay policy. On April 9, 1992, the Executive Board of the Central Conference of American Rabbis called upon Petitioners "to open [their] membership and leadership to all men and boys without regard to their sexual orientation." Executive Board of the Central Conference of American Rabbis, Resolution (April 9, 1992). A.3893; *see also* A.3886-A.3887; A.3894 (Executive Board of the National Federation of Temple Youth, the largest youth organization of Reform Judaism, Resolution (1992-'93), calling upon the Boy Scouts "to open its membership and leadership to all men . . . and boys without regard to their sexual orientation"). We have urged BSA officials to reverse this policy barring gay members, noting that our congregations sponsor Boy Scouts troops consistent with our support for human rights, including "full inclusion of lesbian and gay Jews in all aspects of synagogue life." *Jewish Groups Decry Gay Ban*, Washington Times, July 11, 1992, at B4.

In response to the New Jersey Supreme Court's decision in this case, *amicus curiae* Religious Action Center of Reform Judaism on August 5, 1999 stated:

> We applaud yesterday's decision by the New Jersey Supreme Court requiring the Boy Scouts of America to stop discriminating against homosexuals who wish to participate in scouting activities. . . . The Justices made clear that they find discrimination on the basis of sexual orientation repugnant. So do we. . . . Rank discrimination should have no place in an organization that aspires to inculcate fundamental American values in our nation's boys.

Statement of Rabbi David Sapperstein, Director of the Religious Action Center of Reform Judaism (August 5, 1999). BSA officials have not expelled us for stating our opposing views.

4. *The Protestant Episcopal Church in the U.S.A.*

The Diocesan Council of the Episcopal Diocese of Newark sponsors Boy Scout troops to teach our boys and young men values consistent with the true purposes of Scouting, such as loyalty, courage, kindness, cleanliness, obedience, reverence and moral straightness. We do not participate in Scouting to promote the view that homosexuality is immoral.

Such a view, in fact, contradicts the teachings of The Protestant Episcopal Church in the U.S.A. (the "Episcopal Church") which has a long history of opposition to

discrimination on the basis of affectional or sexual orientation.[9] In 1976, the Episcopal Church issued the following statement:

> Resolved, House of Bishops concurring, that it is the sense of this General Convention that homosexual persons are children of God, who have a full and equal claim with all other persons upon the love, acceptance, and pastoral concern and care of the Church.
>
> * * *
>
> [T]his General Convention expresses its conviction that homosexual persons are entitled to equal protection of the law with all other citizens, and calls upon our society to see such protection provided in actuality.

General Convention of the Protestant Episcopal Church in the U.S.A., Statement on Homosexuality (1976). A.3949. In 1982, the General Convention of the Episcopal Church reaffirmed its position that "homosexual persons are children of God and are entitled to full civil rights." General Convention of the Episcopal Church, Resolution on Civil Rights of Homosexuals (1982). A.3950.

Additionally, the Standing Commission on Human Affairs of the Episcopal Church has since recommended that the church allow gay and lesbian clergy at the discretion of local bishops. *See, e.g.*, Peter Steinfels, *Lesbian Ordained Episcopal Priest*, N.Y. Times, July 6, 1991, at A1. The Boy Scouts' assertion that we participate in Scouting to promote

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9. The Episcopal Church sponsors more than 1,400 BSA troops consisting of more than 50,000 boys and men.

Petitioners' incompatible view of gay youth and men is incorrect and ignores the beliefs and policies of the Episcopal Church.

Consistent with these beliefs and policies, we opposed this anti-gay policy upon learning of it and have called upon BSA officials "to admit to full membership otherwise qualified homosexual persons." Diocesan Council of the Episcopal Diocese of Newark, Resolution on the Diocese of Newark and the Boy Scouts of America (June 9, 1993). A.3958; *see also* A.3913. BSA officials have not expelled us for stating our opposing views.

5. *Unitarian Universalist Association*

Like other members of Scouting, congregations affiliated with the Unitarian Universalist Association ("UUA") sponsor Boy Scout troops for Scouting's true purposes — teaching our boys and young men, among other things, to live kindly, obediently, bravely and in a morally straight and clean manner. Unitarian Universalists do not participate in Scouting to promote the "morality" ascribed to us by Petitioners. Brief for Petitioners, at 20, 25.

In fact, Unitarians long ago recognized that "[h]omosexuality has been the target of severe discrimination by society" and "urge[d] all peoples immediately to bring an end to discrimination against homosexuals, homosexuality, bisexuals, and bisexuality." General Assembly of the Unitarian Universalist Association, Resolution on Discrimination Against Homosexuals and Bisexuals (1970). A.3807. Specifically, the Unitarian Universalist Association:

> call[ed] upon the UUA and its member churches, fellowships, and organizations immediately to end all discrimination against homosexuals in employment practices, expending special effort to assist homosexuals to find employment in our midst consistent with their abilities and desires; [and]
>
> urge[d] all churches and fellowships . . . to initiate meaningful programs . . . with the particular aim to end all discrimination against homosexuals and bisexuals.

Id.

Since that time, the UUA has continued to support the rights of lesbians and gay men through its Office of Lesbian, Bisexual and Gay Concerns. In particular, in 1980, the UUA called upon the Unitarian Universalist Ministers' Association and the UUA Department of Ministerial and Congregational Service "to lend full assistance in the settlement of qualified openly gay, lesbian and bisexual religious leaders." General Assembly of the Unitarian Universalist Association, Resolution on Ministerial Employment Opportunities (1980). A.3809. Moreover, in 1987, the UUA renewed its call for "organizations and society at large to end discrimination against gay and lesbian people" and again expressed its support "for the passage of laws prohibiting discrimination based on sexual orientation." General Assembly of the Unitarian Universalist Association, Resolution on Supporting Legal Equity for Gays and Lesbians (1987). A.3811. BSA officials' assertion that we participate in Scouting to promote the view that homosexuality is immoral is incorrect and ignores our beliefs and policies.

B. Government Sponsors of Boy Scouts

More than any single religious denomination, government entities (including public schools) constitute the largest sponsor of Boy Scout troops in the nation, sponsoring over 19,000 Boy Scout troops consisting of more than 1,000,000 boys and men. *Chartered Organizations: Top 30 For 1997 Ranked By Total Youth*, BSA Today, No. 5-886, February/March 1998 ("Chartered Organizations"); BSA 1990 Report to United States Congress. Government entities subject to Constitutional equal protection guarantees and state civil rights laws such as New Jersey's Law Against Discrimination do not (and may not) participate in the Boy Scouts to express the view that gay boys and men are immoral or that they should be subject to exclusion from the Boy Scouts. *See generally Romer v. Evans*, 517 U.S. 620 (1996). Like other members of the Boy Scouts, they participate in order to teach boys and young men the fundamental and inclusive values set forth in the Scout Oath and Law that bring Scouting's members together.

Government sponsors of the Boy Scouts include civilian branches of the U.S. Air Force, U.S. Army, U.S. Coast Guard, U.S. Coast Guard Auxiliary, U.S. Marine Corps and U.S. Navy. A.4455. NASA is a sponsor of the Boy Scouts, A.4456, as is the Department of Housing and Urban Development. *Chartered Organizations*. Local government entities, including fire and police departments, are also sponsors of Boy Scouts troops. *Id.*; *see generally* A.1592. The New Jersey Supreme Court found that

> in New Jersey, for example, public schools [which are barred by the Law Against Discrimination from discriminating against gay boys in the provision of public school services] and school-affiliated groups sponsor close to 500 scouting units, comprising approximately one-fifth of the chartering organizations in the State. Other government entities, such as law enforcement agencies, fire departments, city governments, and the [civilian] military, sponsor approximately 250 scouting units in New Jersey.

Dale, 160 N.J. at 573. The same is true nationally. A.4455; *Chartered Organizations*.

Public schools, in particular, are one of the largest sponsors of Boy Scout troops in the nation. *Chartered Organizations*. Public school boys have responded in droves to BSA's "[p]ersonal invitation to every boy in school to join Scouting," thereby fulfilling BSA's recruitment goal of "[e]very classroom[,] every boy." 1997 BSA Join Scouting Night Guidebook. Public schools participate in the Boy Scouts because they wish their students to learn the fundamental values set forth in the Scout Oath and Law, *not* because they wish to promote the view that gay boys and men are immoral.

In fact, consistent with applicable Constitutional equal protection guarantees and legal prohibitions on discrimination, public school boards and public school organizations nationwide prohibit discrimination against gay youth in school and school-sponsored activities such as the Boy Scouts. The National School Boards Association, for example, which serves as the national voice for 17,000 local school districts nationwide and which is a national leader in the formulation and implementation of federal and national educational policy, has stated unequivocally that its member

schools must "ensure that students are not subjected to discrimination on the basis of socioeconomic status, race, color, national origin, religion, gender, disability, or *sexual orientation*." Beliefs and Policies of the National School Boards Association, as amended April 12, 1999, Article II ("Responsibilities of Local School Boards"), Sec. 3.4 (emphasis supplied).[10]

Schools and other public entities are members of Scouting side by side with diverse religious groups who agree to disagree on many doctrines and moral views in order to collectively support the goals we do agree upon. Like *amici*, these public entities participate in Scouting for the reasons that Scouting's members have always come together — to teach youth (including gay boys and young men) the values and skills of citizenship, community service and self-respect embodied in the Scout Oath and Law.

CONCLUSION

The broad support among the Boy Scouts' religious and government sponsors and members for the equal legal rights and human dignity of gay boys and men belies Petitioners' contention that these diverse public and religious sponsors and members come together in Scouting for an expressive purpose that mandates exclusion of gay boys and men. Petitioners' characterization of "moral beliefs" that gay youth and adults cannot share in is a smokescreen for invidious discrimination against gay boys and men in violation of New Jersey law. BSA's policy excludes gay youth and men from Scouting without

10. A copy of this document is on file with counsel and available upon request. It is also available on the internet at the website of the National School Boards Association (http://www.nsba.org/about/beliefs.htm).

regard to their adherence to any set of "moral beliefs," while, by contrast, any heterosexual or sponsoring organization may participate in the Boy Scouts even if that individual or organization loudly opposes Petitioners' claimed "moral beliefs" and the policy regarding gay boys and men.

The New Jersey Supreme Court correctly recognized that Petitioners' summary exclusion of gay boys and men — and inconsistent tolerance of conflicting opinions regarding gay boys and men from heterosexuals — forecloses the possibility that BSA "seeks to exclude individuals who do not share the views that the clubs' members wish to promote." *New York State Club Ass'n*, 487 U.S. at 13. Instead, BSA is impermissibly using sexual orientation as a shorthand measure "in place of . . . legitimate criteria for determining membership." *Id.* We, the members and sponsors of Scouting, have no First Amendment problem with enforcement of the Law Against Discrimination. This case raises no First Amendment concerns and this Court should emphatically reject BSA's efforts to invoke *our* First Amendment rights to defend a discriminatory policy that we do not support or believe in, and that we do not participate in Scouting to advance.

Respectfully submitted,

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